



## **Roy Cooper North Carolina Attorney General**

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### **SMALL CLAIMS COURT**

North Carolina's small claims courts help people solve disputes over small amounts of money or personal property quickly, easily, and without a lawyer. These courts handle disputes involving no more than \$5,000 in cash or property. Cases are tried before special judges called magistrates, and they usually take place within a month after the case is filed.

Proceedings in small claims courts are informal, but magistrates make legally binding decisions. A few formal procedures are followed so that everyone is treated fairly. The following information can help you understand how to use small claims court.

#### **Who Can Use Small Claims Court?**

Anyone eighteen years old or over may sue or be sued in small claims court. A person under eighteen can sue if a parent or another adult is appointed by the court to act as the minor's guardian in the lawsuit. If the person you wish to sue is under eighteen or mentally incompetent, you should ask a lawyer for help.

#### **How to Get Your Case to Court**

You must file your suit in the county where the defendant lives, or if the defendant is a business, where it does business.

If the defendant is a corporation, you must use the correct name of the corporation on all court documents. You will need to know its full corporate name, and the name and address of its registered agent. Corporations doing business in North Carolina are required to register with the Secretary of State's Office in Raleigh. You can visit the Secretary of State's website at <http://www.secretary.state.nc.us/Corporations/> to look for information about the corporation, or call their office at 919-807-2000.

If the defendant is a business but not a corporation, you must name the owner (or owners) as the defendant. Anyone who does business under a name other than their own name must register the "assumed name" with the Register of Deeds in each county where they do business.

To start your case, you must file a written complaint in the office of the Clerk of Superior Court. Your complaint should say who you are suing, in what county the defendant lives or does business, what the defendant owes you, and why. You should end your complaint by explaining what you want the court to do for you.

The clerk's office has forms for several types of common complaints, but remember that the complaint form you get from the clerk is just a guide. Make sure your complaint states the facts of your case. The Clerk of Superior Court and the assistant clerks cannot practice law or give you legal advice, so don't ask them to draft your complaint.

There is a fee to file your complaint. But if you win the case, this filing fee will be added to the total amount of money awarded to you in the judgment. Currently the filing fee is \$65.

The clerk will help you set the date and time for the trial. Usually, the trial date will be no later than 30 days from the time you file your complaint.

## **The Summons**

Each person who is being sued must receive a copy of the complaint and a summons. The summons tells the defendant that they must be in small claims court at the appointed time. You can have the complaint and summons delivered by the Sheriff's office for a small fee, or you can send these papers to the defendant by certified mail. If you send the papers by certified mail, you must send them "return receipt request" and you must take the return receipt with you when you go to court for the case.

## **How to Prepare for Trial**

First, think carefully about what you need to prove. What contracts, receipts, sales tickets or other documents can help you prove your case? What witnesses do you need? Remember, witnesses must have first-hand knowledge of the case in order to testify.

If someone has first-hand knowledge of facts that can help you prove your claim, you should try to have that person present at the trial. Sometimes a person who could be a witness for you will not want to testify. If that happens, you can get a subpoena from the Clerk of Superior Court. The subpoena is a legal document that requires the witness to appear at the trial. The sheriff's office will serve the subpoena on the witness for a small fee. A witness who is subpoenaed is entitled to receive a payment for their appearance. If the witness comes from outside the county, they can also get travel expenses. The court usually will require the party who loses the case to pay these costs. However, you must be prepared to pay these costs before the case comes to trial.

If you find that you cannot be in court at the scheduled time, tell the magistrate at once. The magistrate may be able to set another date. If you do not appear when your case is scheduled for trial it will be dismissed, and you may not be permitted to file it again.

## **Settling Out of Court**

If you and the person you have sued are able to settle the dispute before trial, inform the clerk's office or the magistrate that you have settled the case. The suit will then be dismissed. However, the clerk's office will not refund your filing and summons fees, so you should consider these fees when deciding upon the amount of the settlement.

## **The Trial**

The trial proceedings are informal and simple. You, the defendant, the witnesses, and the magistrate will probably be the only persons present. There will not be a jury. The magistrate will tell you what you are expected to do.

The magistrate will ask you to take an oath and then state your case. Tell your story simply and truthfully. Present the evidence you think will help prove your case.

The magistrate may ask you some questions, and will allow the defendant to ask you questions. Then your witnesses will testify and may be questioned. The defendant's testimony will follow. The defendant's version of the facts will probably be different from yours, but the magistrate will allow you to question the defendant. The defendant will call his witnesses, and you may question those witnesses after they have testified for the defendant. Remember, you may ask only questions that are relevant to the facts of the case.

The magistrate will decide the case after hearing all witnesses. The decision may be announced immediately but the magistrate can also take up to ten days to consider the case. Neither side may present more evidence during that ten-day period.

## **After the Trial**

If the decision is in your favor and the defendant has not complied with the judgment within ten days after the magistrate signed it, you may initiate the collection process. If the defendant is a corporation, you may pay a small fee and have the clerk's office issue a Writ of Execution, which is a court document directing the sheriff to seize and sell some of the defendant's property in order to satisfy the judgment.

If the defendant is an individual rather than a corporation, you must take additional steps before the clerk can issue the Writ of Execution. The clerk's office must issue a document known as a Notice of Rights to Have Exemptions Designated. You must then have the document served upon the defendant, either through the sheriff's office or by certified mail, return receipt requested. Judgments remain on record for ten years and are renewable for another ten.

The party who loses can appeal the decision within ten days. If there is an appeal, a new trial will be scheduled in district court. When a case is appealed to district court, the process starts over from the beginning as if there had been no previous trial. Either party may request a jury trial in district court but the request must be in writing. If neither party requests a jury trial, the judge will act as the jury.

Proceedings in district court are more formal, lengthy, and expensive, especially with a jury. If the judge requires you to file any additional legal papers, they will not be available as forms from the clerk. Many people hire an attorney for proceedings in district court, but an attorney is not required.

If you decide not to hire an attorney, you can prepare for trial in much the same way as you did for small claims court. The clerk will send you a notice telling you when to appear for trial. Be sure the clerk's office has your correct mailing address. If you do not appear, the court may enter judgment against you.

## **What to Do When Someone Sues You**

Read the complaint against you and the summons carefully, so you will know what the case is about and when you must appear in court. Defending yourself isn't complicated or difficult, so you don't have to hire an attorney if you are sued in small claims court. If you think you can handle it by yourself, begin to prepare at once. If not, consult a lawyer immediately.

If someone is suing to collect a debt you owe, you can offer to pay the debt or arrange some way to settle the case before the trial. If you settle before trial, make sure the person suing you informs the magistrate so that the case will be dismissed.

You may respond to the complaint and present your side of the story in writing by filing an answer with the clerk before the trial. You do not have to file an answer, but the answer may help the magistrate understand your case. Even if you do file an answer, you must go to court at the time of trial. You may bring other witnesses or have them subpoenaed if they will not come voluntarily. (For more information about subpoenas, see "How To Prepare For Trial" above.)

In some cases, each side will have claims against the other side. In these cases, you can file a counterclaim. For example, a landlord may sue a tenant for unpaid rent and money for property damage, and the tenant may counterclaim for the return of a security deposit. If you have a claim of no more than \$5,000 against the person who sues you, you may file a counterclaim as part of your written answer.

It is very important that you and your witnesses appear for trial on time. If you do not appear, the magistrate may hear the case without you. If you are not able to be there at the scheduled time, contact the magistrate and ask for a postponement immediately.